Bangalore Electricity Supply Company Limited

BESCOM

(Government of Karnataka Undertaking)

CIN –U04010KA2002SGC030438

GENERAL CONDITIONS OF CONTRACT

Enquiry No: BESCOM/2023-24/SE0115

VOLUME-I

Section-II

"For Setting up and Managing the Integrated (24x7) call center by providing qualified personnel with necessary infrastructure for Circle Control Room pertaining to CTAZ and BRAZ of BESCOM in single premises to be located in Bangalore**"**

ISSUED BY

General Manager (Ele)
Customer Relations, Corporate office,
BESCOM, Bangalore

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INTRODUCTION

1.0 DEFINITIONS

a) '**The Contract**' means the **Agreement** entered into between Owner/ Employer and Agency/Bidder as per the Contract Agreement signed by the Parties including all attachments, annexures and appendices there to and all Documents incorporated by reference therein.

b) '**Owner/Employer/Employer**' shall mean the **Bangalore Electricity Supply Company Limited (BESCOM)** and shall include their Legal Representatives, Successors and Assigns.

c) '**Agency/Bidder**' or '**Agency**' shall mean the **Bidder** whose Bid will be accepted by the **Owner/Employer/Employer** for the Award of the Works and shall include such successful Bidder's Legal Representatives, Successors and Permitted Assigns.

d) '**Specifications**' shall mean the Technical Specifications and Requirements of the Bidding Document forming a Part of the Contract and such other Schedules and Drawings as may be mutually agreed upon.

e) The term '**Contract Price**' shall mean the Lump Sum Price comprised of Unit Price quoted by the Agency/Bidder (including applicable taxes) in his Bid with additions and/or deletions as may be agreed and incorporated in the Letter of Award, for the entire Scope of the Works.

f) **'Notice of Award of Contract'/'Letter of Award/Letter of Intent'** shall mean the Official Notice issued by the Owner/Employer notifying the Agency/Bidder that his Bid has been accepted.

g) '**Date of Contract**' shall mean the date on which Notice of Award of Contract/ Letter of Award has been issued.

h) **'Month'** shall mean the Calendar Month. **'Day'** or **'Days'** unless herein otherwise expressly defined shall mean Calendar Day or Days of 24 Hours each. '**A Week'** shall mean continuous period of Seven (7) Days.

i) '**Writing**' shall include any Manuscript, Type Written, Computer Generated or Printed Statement, under or over Signature and/or Seal, as the case may be.

j) Words imparting the **Singular only** shall also include the **Plural** and vice- versa where the Context so requires.

k) Words imparting **'Persons'** shall include Firms, Companies, Corporation and Associations or Bodies of individuals, whether incorporated or not.

l) **"Bidding Documents"**: Means Information & Instructions, General Conditions of Contract, and other Annexures included in Sections ITB &GCC,

2.0 APPLICATION

These General Conditions shall apply to the extent that they are not

superseded by provisions in other parts of the Contract.

3.0 STANDARDS

The manpower supplied & Infrastructure provided under this Contract shall conform to the Standards referred in the bid document, and, when no applicable Standard is mentioned,

shall conform to the authoritative Standard appropriate to the Skilled manpower and such Standards shall be the latest issued by the concerned Institution.

4.0 LANGUAGE AND MEASURES:

All Documents pertaining to the Contract including Specification, Schedules, Notices, Correspondence, Routine Operation Instructions, or any other Writing shall be written in English/Kannada language. The Metric System of measurement shall be used exclusively in the Contract.

5.0 CONTRACT DOCUMENTS:

The term Contract Documents shall mean and include the following which shall be deemed to form an integral part of the Contract:

a) Instructions to Bidders, General Terms and Conditions of Contract, Annexures provided with the bid document.
b) Specifications of the Manpower & Infrastructure to be provided under the Contract as brought out in the bid document(ITB).
c) Agency/Bidder's Bid Proposal and the Documents attached thereto including the Letters of Clarifications thereto between the Agency/Bidder and the Owner/Employer prior to the Award of Contract except to the extent of repugnancy.
d) All the Contract Manpower, Literature, Data and Information of any sort given by the Agency/Bidder along with the Bid, subject to the approval of the Owner/Employer.
e) Letter of Award and any agreed variations of the Conditions of the Documents and General Terms and Conditions of Contract, if any.
f) In the event of any conflict between the above mentioned Documents, the matter shall be referred to the Authorised Personnel from the BESCOM Management whose decision shall be considered as final and binding upon the Parties.
g) All the relevant Information/Contract Manpower & Infrastructure furnished by the Agency/ Bidder such as Qualifications of the candidates or any other Data during the course of Contract can be used by the Owner/Employer elsewhere for approvals and display.

6.0 USE OF CONTRACT DOCUMENTS AND INFORMATION:

a) The Agency/Bidder shall not, without the Owner/Employer's prior written consent, disclose the Contract, or any provision thereof, or any Specification, or Information furnished by or on behalf of the Owner/Employer in connection therewith, to any Persons other than a Person employed by the Agency/Bidder in the Performance of the Contract. Disclosure to any such employed Persons shall be made in confidence and shall extend only so far, as may be necessary for purposes of such Performance.
b) The Agency/Bidder shall not, without the Owner/Employer's prior written consent, make use of any Document or information

enumerated in various Contract Documents except for purpose of performing the Contract.

c) The Agency/Bidder shall not communicate or use in Advertising, Publicity, Sales Releases or in any other Medium, Photographs or other reproduction of the Works under this Contract, or descriptions of the Site, Dimensions,

Quantity, Quality or other information, concerning the Works unless prior written permission has been obtained from the Owner/Employer.

7.0 LAW GOVERNING OF CONTRACT:

a) The Contract, shall in all respects be constructed and governed according to Indian Laws

b) The Courts of Bangalore shall have exclusive jurisdiction in all matters arising under this Contract.

8.0 MANNER OF EXECUTION OF CONTRACT:

8.1 The successful Bidder has to submit the acceptance letter to General Manager (Customer Relation), Corporate Office, BESCOM within 7 Days, Performance Bank Guarantee & Agreement within 20 days from the date of LOI/DWA.

8.2 If the Bidder fails to submit the above within the stipulated period, the EMD paid will be forfeited without any intimation to the Bidder & LOI stands terminated.

8.3 The successful Bidder shall enter in to an agreement in the prescribed format on stamp papers of Rs 500/- with duly submitting performance guarantee within 20 days from the date of LOI at the Office of the Owner/Employer at Bangalore or other place as mentioned in the Letter of Intent on a date and time to be mutually agreed to. The Agency/Bidder shall provide for signing of the Contract, Performance Guarantee, appropriate Power of Attorney and other requisite Materials. In case the Contract is to be signed beyond the stipulated time, the Bid Security submitted with the proposal shall be extended accordingly.

8.4 The Agreement shall be signed in **Two** Originals and the Agency/Bidder shall be provided with one signed Original copy and the Owner/Employer will retain the other.

9.0 ENFORCEMENT OF TERMS:

The failure of either Party to enforce at any time any of the provisions of this contract or any rights in respect thereto or to exercise any option therein provided, shall in no way be construed to be a waiver of such provisions, rights or options or in any way to affect the validity of the Contract. The exercise by either Party of any of its rights herein shall not preclude or prejudice either Party from exercising the same or any other right it may have under the Contract.

10.0 COMPLETION OF CONTRACT:

Unless otherwise terminated under the provisions of any other relevant Clause, this Contract shall be deemed to have been completed on the expiry of the contract Period.

11.0 EFFECTIVENESS OF CONTRACT:

The Contract shall be considered as having come into force from the date of the Detailed Work Award.

12.0 LIQUIDATED DAMAGES:

a) In case the agency fails to provide the Manpower/Infrastructure as stipulated in the work award/tender document, a penalty at the rate of ½% per week for the facilities not provided subject to a maximum of 10% of the contact/ award amount shall be levied on the agency .

b) The payment of liquidated damages shall not in any way relieve the Agency/Bidder from any of its obligation and liabilities under the Contract.

13.0 DEDUCTIONS FROM WAGES FOR ABSENCE

a) In case of absence without information beyond allowed leaves of a resource during contract period, no payment will be made for the days the resource is absent (per day payment will be calculated by dividing man month rate by number of working days in that month).

b) Fraction of a day in reckoning period in services shall be eliminated if it is less than half a day.

c) Penalty would be deducted from the applicable payments of organization for the particular resource.

14.0 PROMOTIONS AND INCREMENTS:

a) The candidates provided by the Agency/bidder are not entitled to claim the employment from the Employer's company under this contract. Also, no promotions or increments or any other incentives shall be provided other than the specified remunerations as defined in the contract.

b) The BESCOM shall not be liable to pay any allowance, salary or any other amount under any law in force for the staff engaged by the agency. The BESCOM shall also be not liable for breach of any Labour Laws or any other Laws for the time being in force. The agency shall not be entitled to any other allowances or benefits which are not included in the contract.

15.0 TRANSPORTATION AND AMENITIES

Employer shall not be responsible for providing any transportation facility/ refreshment to the manpower provided by the agency.

16.0 DEFENSE OF SUITS:

If any action in Court is brought against the Owner/Employer or Engineer or an Officer or Agent of the Owner/Employer, for the failure, omission or neglect on

the part of the Agency/Bidder to perform any Acts, Matters, Covenants or things under the Contract, or for Damage or injury caused by the alleged omission or negligence on the part of the Agency/Bidder or in connection with any Claim based on lawful demands of Workmen, Suppliers or Employees, the Agency/ Bidder shall in all such cases indemnify and keep the Owner/Employer, and the Engineer and/or his Representative, harmless from all losses, Damages, expenses or Decrees arising of such action.

17.0 LIMITATION OF LIABILITIES:

The final Payment by the Owner/Employer in pursuance of the Contract shall mean the release of the Agency/Bidder from all his liabilities under the Contract. Such final Payment shall be made only at the end of the Guarantee/ Warranty Period, and till such time as the Contractual liabilities and responsibilities of the Agency/Bidder, shall prevail. All other Payments made under the Contract shall be treated as on account Payments. At this stage i.e., at the time of ficial payment as referred here in before, if BESCOM notices that any excess payment is made, such amount shall be deducted by BESCOM from the balance payments with intimation to the organization.

18.0 OWNER/ EMPLOYER'S DECISION:

a) In respect of all matters which are left to the decision of the Owner/Employer including the granting or with-holding of the Certificates, the Owner/Employer shall, if required to do so by the Agency/Bidder, give in writing a decision thereon.
b) If, in the opinion of the Agency/Bidder, a decision made by the Owner/ Employer is not in accordance with the meaning and intent of the Contract, the Agency/Bidder may file with the Owner/Employer, within fifteen (15) days after receipt of the decision, a written objection to the decision. Failure to file an objection within the allotted time will be considered as an acceptance of the Owner/Employer's decision and the decision shall become final and binding.
c) It is the intent of the Agreement that there shall be no delay in the execution of the Works and the decision of the Owner/Employer as rendered shall be promptly observed.

19.0 CHANGE OF REQUIREMENT:

a) During the execution of the Contract, the Owner/Employer reserves the right to increase or decrease the requirement in manpower under the Contract but without any change in unit Price or other Terms and Conditions. The Owner/Employer reserves the right to Increase the manpower requirement not exceeding 25% of the total manpower service during the execution of Contract. The Agency/Bidder shall provide the same, if requested, at the same Unit Rates of the Contract.
b) The base Unit Rates, as identified in the Contract shall however remain constant during the currency of the Contract.

c) When the minimum wages are revised by the Govt. of Karnataka, the amount will be compensated by BESCOM in proportion towards wages.

20.0 CERTIFICATE NOT TO AFFECT RIGHT OF OWNER/EMPLOYER AND LIABILITY OF AGENCY/BIDDER:

No interim Payment Certificate of the Owner/Employer, nor any Sum paid on account by the Owner/Employer, nor any extension of time for execution of the Contract granted by the Owner/Employer shall affect or prejudice the rights of the Owner/Employer against the Agency/Bidder or relieve the Agency/Bidder of his obligation for the due Performance of the Contract, or be interpreted as approval of the Works done or of the Equipment furnished and no Certificate shall create liability for the Owner/Employer to pay for alterations, amendments, variations or additional Works not Ordered, in writing, by the Owner/Employer or discharge the liability of the Agency/Bidder for the Payment of Damages whether due, ascertained, or certified or not or any Sum against the Payment of which he is bound to indemnify the Owner/Employer, nor shall any such Certificate nor the acceptance by him of any Sum paid on account or otherwise affect or prejudice the rights of Owner/Employer against the Agency/Bidder.

21.0 CONTRACT PERFORMANCE GUARANTEE/GUARANTEE:

The Bidder has to furnish the Performance Bank Guarantee as per the clause 44.0 of ITB.

22.0 PAYMENT:

a) The Payment to the Agency/Bidder for the Performance of the Contract will be made by the Owner/Employer as per the guidelines and Conditions specified herein and as per the payment terms stipulated vide ITB clause 39.0 “Payment”. All Payments made during the Contract shall be on account Payments only. The final Payment will be made on Completion of all Works and on fulfillment by the Agency/Bidder of all his liabilities under the Contract.

b) All Payments under the Contract shall be in Indian Rupees only.

c) The Contract Price Schedule shall remain constant throughout the period of execution of Contract.

23.0 TIME – THE ESSENCE OF CONTRACT

The Time and Date of Completion of the Contract as stipulated in the Contract by the Owner/Employer without or with modifications, if any, and so incorporated in the Letter of Award, shall be deemed to be the essence of the Contract. The Agency/Bidder shall so organize his resources and provide the infrastructure/manpower as per requirement mentioned in ITB Clause.

A. RISK DISTRIBUTION

24.0 INSURANCE:

If a worker suffers injury or loss of life due to his own negligence or for not following the safety measures instructed to him, the Owner/Employer Company shall not be liable for providing any compensation to the worker or contractor. The insurances necessary on such account shall be at the cost of the agency and maintain insurance with reputed insurance companies as per the applicable law of India to the satisfaction of Owner/Employer Company. The agency shall submit the proof of such insurance policy obtained to the employer along with the first bill for the worker.

25.0 LIABILITY FOR ACCIDENTS AND DAMAGES:

Under the Contract, the Agency/Bidder shall be responsible for loss or Damage to the Plant/ Structures due to the any untoward act of the workmen provided by Agency/Bidder. Also bidder shall be responsible for damages due to negligence/mal operation/deliberate acts of misconduct by Project Engineers/ Project Executives' staff provided.

The Agency/Bidders workmen shall not engage in any strikes or cause interruption in the work for any reason. In the event of such interruptions taking place, the contractor shall compensate the Owner/Employer Company for any losses that may have arisen as specified by the Owner/ Employer.

26.0 TERMINATION OF THE CONTRACT

The Contract is liable for termination on following grounds;

26.1 Deficiency of services
26.2 Breach of any terms of the contract

The Employer shall exercise its discretionary powers on the following:

a) Recover from the Agency the liquidated damages and penalty, as per the contract.
b) Obtain above services elsewhere, after giving the notice to the service provider at his risk & cost without cancelling the Contract.
c) To cancel the work award.
d) To black list the contractor.
e) Forfeit the performance bank guarantee furnished on non-performance of the contract as well as any dues payable to the employer by the way of penalty and liquidated damages.

The decision of the Owner/Employer shall be final as regards the acceptability or otherwise of Manpower supplied.

The breach of agreement of any clause or clauses as stated above is liable for termination of agreement by giving fifteen (15) days' notice.

27.0 FORCE MAJEURE:

a) Force Majeure is herein defined as any cause which is beyond the control of the Agency/Bidder or the Owner/Employer as the case may be, which they could not foresee or with a reasonable amount of diligence could not have foreseen and which substantially affects the Performance of the Contract, such as:

i. Natural Phenomena, including but not limited to Floods, Droughts, Earthquakes and Epidemics.
ii. Acts of any Government, domestic or foreign, including but not limited to War, declared or undeclared, Priorities, Guarantees, and Embargoes.

b) Provided either Party shall, within fifteen (15) days from the occurrence of such a cause, notify the other in writing of such causes.

c) The Agency/Bidder or the Owner/Employer shall not be liable for delays in performing his obligations resulting from any Force Majeure cause as referred to and/or defined above. The date of Completion of Contract will subject to hereinafter provided, is extended by a reasonable time even though such cause may occur after Agency/Bidder's Performance of obligation has been delayed due to other causes.

d) Force majeure shall not include any event which is caused by the negligence or intentional action of a party or employees, or by a failure to observe good engineering practices.

e) Force Majeure shall not include insufficiency of funds of failure to make any payment required hereunder.

28.0 SUSPENSION OF CONTRACT:

a) The Owner/Employer reserves the right to suspend and reinstate execution of the whole or any part of the Contract without invalidating the provisions of the Contract. Orders for suspension or reinstatement of the Works will be issued by the Owner/Employer to the Agency/Bidder in writing. The time for Completion of the Contract will be extended for a period equal to duration of the suspension.

b) Any necessary and demonstrable Cost incurred by the Agency/Bidder as a result of such suspension of the Works will be paid by the Owner/Employer, provided such Costs are substantiated to the satisfaction of the Owner/Employer. The Owner/Employer shall not be responsible for any liabilities if suspension or delay is due to some default on the part of the Agency/Bidder or his Sub-Agency/Bidder.

29.0 AGENCY'S DEFAULT

a) If Agency/Bidder shall fail to execute the Contract leads to breach of agreement as stated in **Clause 26.0** “Termination of Contract” and accordingly the Contract is liable for termination by giving fifteen (15) days’ notice by Owner/Employer.

b) In addition, such action by the Owner/Employer as aforesaid shall not relieve the Agency/Bidder of his liability to pay Liquidated Damages for delay in Completion of Contract as defined under the clause “Liquidated damages” of this Section.
The agency will comply with all the provisions regarding licensing, welfare and health, procedures, maintenance of various records and registers etc., as provided under the Contract Labour (Regulation & Abolition) Act 1970 and also

under the order issued by the Government of Karnataka there under, and for its non-compliance, the agency shall be responsible for penalties levied by the appropriate authority under the Act. The agency shall also be liable to comply with all other Labour and Industrial Laws and such

other Acts and Statutes (including Factories Act, Payment of Bonus Act, etc.). Depositing of PF contribution as may be applicable is the responsibility of the agency at his own expenses and shall not be reimbursed by the BESCOM. Any default in compliance, the agency shall be held responsible.

Such action by the Owner/Employer as aforesaid the termination of the Contract under this Clause shall not entitle the Agency/Bidder to reduce the value of the Contract Performance Guarantee nor the time thereof. The Contract Performance Guarantee shall be valid for the full value as mentioned in Performance Guarantee Clause and till the period of 90 days after the completion the Contract.

30.0 TERMINATION OF CONTRACT ON OWNER/EMPLOYER'S INITIATIVE

a) The Owner/Employer reserves the right to terminate the Contract either in part or in full due to reasons other than those mentioned under Clause entitled Agency/Bidder's Default. The Owner/Employer shall in such an event give fifteen (15) days' Notice in writing to the Agency/Bidder of his decision to do so. The Agency/Bidder, upon receipt of such Notice, shall discontinue the Workmen on the date and to the extent specified in the Notice, make all reasonable efforts to obtain cancellation of all Orders and Contracts to the extent they are related to the Workmen terminated and terms Satisfactory to the Owner/Employer. Stop all further Sub-Contracting or hiring activity related to the Workmen terminated, and assist the Owner/ Employer Works acquired under the Contract by the Owner/Employer.

b) In the event of such a termination the Agency/Bidder shall be paid the amount due to him for the work already under taken.

31.0 GRAFTS AND COMMISSIONS ETC.

Any Graft, Commission, Gift or advantage given, promised or Offered by or on behalf of' the Agency/Bidder or his Partner, Agent, Officers, Director, Employee or Servant or any one on his or their behalf in relation to the obtaining or to the execution of this or any other Contract with the Owner/Employer, shall in addition to any Criminal liability which it may incur subject the Agency/Bidder to the cancellation of this and all other Contracts and also to Payment of any loss or Damage to the Owner/Employer resulting from any cancellation. The Owner/Employer shall then be entitled to deduct the amount so payable from any money otherwise due to Agency/Bidder, under the Contract.

32.0 BANKRUPTCY:

If the organization shall become bankrupt or otherwise insolvent or have a receiving order made against or compound with other creditors, or being a Corporation, commence to be wind up, not

being a voluntary winding up for the purpose only of amalgamation/reconstruction, or carry on its business under a receiver for the benefit of its creditors or any of them, BESCOM will be at liberty to terminate the contract forthwith by notice in writing to the organization.

B. RESOLUTION OF DISPUTES

33.0 LAW, JURISDICTION, DISPUTES RESOLUTION AND ARBITRATION

a) Party claiming that a Dispute has arisen under this Agreement must give the other Party a written notice of the particulars of the Dispute.

b) Any dispute(s) or difference(s) arising out of or in connection with the Contract shall, to the extent possible, be settled amicably between the Parties.

c) If the party fails to resolve such a dispute or difference by mutual consultation within thirty (30) days from the commencement of such dispute and difference, either party may require that the dispute be referred to arbitration under the Arbitration and Conciliation Act, 1996 (Indian) and subsequent Amendments made thereon, to be adjudicated by a sole arbitrator to be appointed by mutual agreement of both the parties and the award of the arbitrator shall be final and conclusive and binding upon both the Parties. (The date of commencement of the dispute shall be taken from the date when this clause reference is quoted by either party in a formal communication clearly mentioning existence of dispute or as mutually agreed).

d) The place of arbitration shall be in Bangalore. The arbitral procedure shall be conducted in English language.

e) The cost of arbitration including the fees of arbitrator shall be borne by both the parties equally.

f) During the settlement of disputes and Arbitration proceedings, both parties shall be obliged to carry out their respective obligations under the contract.

g) The award of the arbitrator shall be final and conclusive and binding upon the parties.

h) The courts of Bangalore only shall have the exclusive jurisdiction to deal with any issues arising out of this agreement.

34.0 NOTICES:

a) Any Notice given by one Party to the other, pursuant to Contract, shall be sent in writing by Registered Post with Acknowledgement Due or Email.

b) Notice(s) shall be deemed to have been duly and properly served upon the Parties hereto, if sent by any of the above-mentioned methods to the address mentioned in the Contract.

c) A Notice shall be effective when issued by one of above-mentioned means or on the Notice's effective date, whichever is later.

S/d

General Manager

Customer Relations,

BESCOM.